

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

STEVE HAWLEY,)	Case No. DEMO-99-0001
)	
Appellant,)	FINDINGS OF FACT, CONCLUSIONS OF LAW
)	AND ORDER OF THE BOARD
)	
v.)	
)	
DEPARTMENT OF SOCIAL AND HEALTH)	
SERVICES,)	
)	
Respondent.)	
)	
)	

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the Tukwila Labor and Industries Office, Seattle, Washington, on March 14 and 17, 2000. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant appeared *pro se*. Respondent Department of Social and Health Services was represented by Janetta Sheehan, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty, inefficiency, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleged that Appellant conducted personal business during work time and misused the SCAN telephone system.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Steve Hawley is an Office Assistant Senior and permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 6, 1999.

2.2 Appellant began his employment as a Social Worker 3 with the King South Division of Children and Family Services (DCFS) in Kent, Washington in July 1996. As a Social Worker 3, Appellant was responsible for managing a caseload of clients who, in many cases, were experiencing drug, alcohol and mental health problems and were unable to provide care for their children. Appellant's duties included assessing risk to the children, filing dependency petitions, attending court hearings, identifying needs for services, making field visits to clients' homes, and developing appropriate service plans for families. Appellant worked under very little supervision. Appellant has no history of prior formal or informal disciplinary action.

2.3 Cindi Bodle was an intern working at the King South DCFS when Appellant began his employment. Ms. Bodle and Appellant had been involved in a personal relationship prior to Appellant's employment at the King South DCFS and they continued their personal relationship until Ms. Bodle's employment terminated sometime in 1997. In December 1997, Appellant discontinued their relationship.

1 2.4 On January 2, 1998, Ms. Bodle met with Appellant's Supervisor, Gwen Seagroves, Social Worker
2 4/CPS Supervisor. Ms. Bodle informed Ms. Seagroves that during her tenure at the DCFS, she and
3 Appellant had carried on a personal relationship and that 90 percent of the time they spent together was
4 during Appellant's work hours. Ms. Bodle provided Ms. Seagroves with a list of dates that she and Appellant
5 met during work hours. Ms. Bodle further alleged that the times she met with Appellant prior to July 1997
6 occurred in Enumclaw or Sumner and that subsequent to July 1997, she met with Appellant in Auburn. Ms.
7 Bodle also alleged that Appellant made numerous personal phone calls to her residence using the state SCAN
8 line during work hours.

9
10 2.5 On January 15, 1998, Ms. Seagroves initiated two Personnel Conduct Reports (PCRs) against
11 Appellant. The first PCR alleged, in part, Ms. Bodle had "had sexual relations with Steve during work hours
12 on 12/31/96, 1/17/97, 2/3/97, 2/7/97, 5/1/97, 5/21/97, 7/11/97, 7/25/97, 8/29/97, 9/3/97, 9/11/97, 8/18/97,
13 9/23/97, 10/30/97, 11/3/97 and 11/20/97." The PCR also alleged that Appellant accompanied Ms. Bodle to a
14 medical appointment during work hours on November 3, 1997, and that the personal visits lasted one to
15 three hours. The second PCR alleged that Appellant had made 273 long distance phone calls of a personal
16 nature using the state SCAN system.

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18 2.6 Carol Sandoval, Social Services Supervisor, conducted an investigation of the allegations made by
19 Ms. Bodle. As a part of the investigation, Ms. Sandoval reviewed Appellant's leave and SCAN records, his
20 field itinerary sheets which documented business visits and his travel expense vouchers. Appellant's entries
21 into the agency's computerized logging system for client records were also reviewed for entries by Appellant
22 to verify whether or not Appellant had made client contact on the days in question. A review of Appellant's
23 SCAN records showed that Appellant had made 273 personal long-distance phone calls to his home phone
24 number, to Ms. Bodle's residence and to his personal business phone.

1 2.7 M.K. Deacon, Area Administrator for Region 4 DCFS, reviewed the PCRs, the investigative reports,
2 two written statements from Appellant, and met with Appellant on two occasions. After ruling out any dates
3 offered by Ms. Bodle on which Appellant may have had some business or client contact, Ms. Deacon
4 concluded that there was reasonable cause to believe that Appellant had sexual contact with Ms. Bodle
5 during work hours and that the locations where he met with Ms. Bodle were far enough from his work station
6 that the travel time alone would have extended beyond his lunch and break times.

7
8 2.8 During the investigation, Appellant admitted that he attended a medical appointment with Ms. Bodle
9 on November 3, 1997 which went beyond his one-hour lunch period and that he did not request nor receive
10 supervisory approval to be off from work nor did he submit a leave slip for the time. Appellant also admitted
11 that he made personal long distance phone calls using the state SCAN system. Appellant subsequently
12 reimbursed the agency \$112.34 for non-work related long-distance calls he made from the DCFS office
13 between April 1997 through November 1997. Appellant's personal phone calls totaled 30.23 hours of work
14 time.

15
16 2.9 By letter dated December 28, 1998, Joseph G. Bell, Ph.D., Regional Administrator for the Division
17 of Children and Family Services, notified Appellant of his demotion from his position as a Social Worker 3
18 to an Office Assistant Senior, effective January 12, 1998. Dr. Bell charged Appellant with neglect of duty,
19 inefficiency, gross misconduct and willful violation of agency policy and specifically alleged that Appellant
20 1) used work time on December 31, 1996, February 3, 1997, May 21, 1997, July 11, 1997, September 3,
21 1997, September 18, 1997, October 30, 1997 and November 3, 1997, to meet and carry on a personal and
22 intimate relationship with Cindi Bodle and 2) misused the SCAN telephone system when he made 273 long
23 distance phone calls of a personal nature during work hours.

24 2.10 During the course of the hearing, Ms. Bodle presented credible testimony regarding Appellant's
25 visits with her during work hours. Ms. Bodle credibly testified that she documented on a calendar the dates
26

1 that Appellant met with her. Ms. Bodle testified that on December 31, 1996, February 3, 1997 and May 21,
2 1997, Appellant traveled to her home in Enumclaw. The drive from the Kent DCFS to Enumclaw is
3 approximately 45 to 60 minutes one way. Ms. Bodle testified that on July 11, 1997, September 3, 1997,
4 September 18, 1997 and October 30, 1997, Appellant met with her in Auburn, which was approximately a
5 25 to 30 minute drive one way from the Kent DCFS. Ms. Bodle testified that Appellant normally spent one
6 to three hours with her during each visit.

7 2.11 Ms. Bodle further testified that on November 3, 1997, she met Appellant at the DCFS office at 10
8 a.m. and drove with Appellant to a Seattle area hospital. Ms. Bodle returned Appellant to the DCFS office at
9 approximately 3 p.m.

10
11 2.12 Appellant admits that he met Ms. Bodle during lunch breaks at various locations, including at a
12 friend's home in Auburn, but he denies that his visits with Ms. Bodle occurred during his work time.
13 However, based on Appellant's testimony and admission that he met with Ms. Bodle during work lunch
14 periods, we find that more likely than not these visits went beyond his allotted lunch break time as described
15 by Ms. Bodle. Furthermore, Appellant's admitted failure to submit a leave slip for the time he spent with
16 Ms. Bodle at a medical appointment during work hours on November 3, 1997, and his misuse of the SCAN
17 system lend further credibility to Ms. Bodle's testimony.

18
19 2.13 On July 8, 1996, Appellant participated in a New Employee Orientation during which a number of
20 the agency's policies, rules and regulations were reviewed with Appellant. Included in the orientation was a
21 review of a memo entitled "Misuse of the SCAN System and State Equipment" which stated that the SCAN
22 system was not to be used for anything other than state business. Appellant also reviewed Administrative
23 Policy No. 6.04, Standards of Ethical Conduct for Employees, which states in part that DSHS employees are
24 required to perform their duties and responsibilities in a manner that maintains standards of behavior that
25 promote public trust, faith and confidence. The policy further states that state employees are prohibited from
26 using state employment for private gain or advantage; are to use department facilities, equipment, materials

1 and time only for official department business; are to demonstrate the highest ethical standards of personal
2 integrity, fairness, honesty, and compliance with departmental policies; and are to promote an environment
3 of public trust free from misuse of public property.

4
5 2.14 Appellant acknowledged having read and/or received copies of the orientation information, including
6 the memo on the misuse of SCAN and Policy 6.04.

7
8 2.15 Dr. Bell was Appellant's appointing authority. Upon receiving Ms. Deacon's determination and
9 finding of misconduct on both PCRs, Dr. Bell reviewed the evidence and considered Appellant's version of
10 the events. Dr. Bell was convinced that the agency had performed a thorough and fair investigation and that
11 Appellant's denial regarding the first PCR was not credible or believable. In determining the level of
12 discipline, Dr. Bell considered that Appellant's position as a Social Worker 3 required him to work
13 independently and be responsible and trustworthy. Dr. Bell did not believe that the agency could continue to
14 trust Appellant to use his work time in a responsible manner. Dr. Bell determined that the agency's policy
15 on SCAN use was clear and that common sense should have alerted Appellant that it was improper to make
16 personal long distance calls using the SCAN system. Dr. Bell determined that demotion to an Office
17 Assistant Senior position, where Appellant would be closely supervised, was the appropriate sanction
18 because Appellant could no longer be trusted in a Social Worker 3 position.

19
20 **III. MOTION**

21 3.1 At the completion of Respondent's case in chief, Appellant moved to dismiss the disciplinary action
22 against him for Respondent's failure to timely initiate the PCRs. Appellant argued that based on the
23 appointing authority's testimony, he was aware of Appellant's alleged misconduct in December 1997, but
24 that the PCRs were not initiated against him until January 15, 1998. Therefore, Appellant argues that
25 Respondent violated Policy 545 by not initiating the PCRs within 14 days of becoming aware of the alleged
26 misconduct.

1
2 3.2 Respondent argued that the appointing authority was confused when he testified and that he had
3 knowledge of Appellant's alleged misconduct in December 1997. Respondent argues that Ms. Seagroves
4 first became aware of the alleged misconduct on January 2, 1998 and that the appointing authority was
5 notified subsequent to January 2, 1998. Respondent argues that the PCRs, both dated January 15, 1998, were
6 initiated within the appropriate time frames.

7
8 3.3 The Board took the motion under advisement and now denies Appellant's motion. Although the
9 appointing authority testified that he knew of Ms. Bodle's allegations against Appellant in December, the
10 record is clear that Ms. Bodle first informed Ms. Seagroves on January 2, 1998. Ms. Seagroves was the first
11 individual in the agency to have knowledge of Appellant's alleged misconduct, and she subsequently advised
12 her supervisor and the appointing authority of the allegations. Ms. Bodle had not informed any other
13 individual in Appellant's chain of command prior to January 2, 1998. Therefore, the PCRs initiated by Ms.
14 Seagroves on January 15, 1998, were initiated in a timely manner.

15 16 **IV. ARGUMENTS OF THE PARTIES**

17 4.1 Respondent argues that a preponderance of the evidence establishes that Appellant was engaging in
18 personal business during work hours and that he failed to obtain approval to be away from the office and to
19 submit leave slips for his absences. Respondent argues that Appellant was aware of the agency's policy
20 concerning the use of the SCAN system and that he violated agency policy when he made 273 calls
21 amounting to over 30 hours of personal long distance calls from his work station. Respondent argues that
22 Appellant neglected his duty to perform the responsibilities of his job as a Social Worker 3 when he was
23 conducting personal business during work time and while he was making personal phone calls during work
24 time. Respondent argues that it conducted a thorough investigation and that if there was any chance that
25 Appellant was conducting work on any of the alleged dates, he was given the benefit of the doubt and those
26 dates were not included in the disciplinary letter. Respondent argues that Appellant's failure to fully perform

1 the duties of his position during working hours resulted in a loss of time to the agency and constituted
2 inefficiency. Respondent argues that Appellant's actions were egregious and rose to the level of gross
3 misconduct.

4
5 4.2 Appellant admits that he met with Ms. Bodle during lunch and break times, but denies that they met
6 during work hours. Appellant also admits that he attended a medical appointment with Ms. Bodle on
7 November 3, 1997 which extended beyond his lunch hour, but he asserts that he was absent from work no
8 longer than two and one half hours, not four as alleged. Appellant contends that Ms. Bodle is retaliating
9 against him because he terminated their relationship. Appellant also argues that Respondent disciplined him
10 for his sexual relationship with Ms. Bodle. Appellant contends that he was not provided any policies during
11 his orientation and was not aware that personal long distance calls were not permitted. Appellant contends
12 that he should not be disciplined for the SCAN calls because he repaid the agency and because other
13 employees misused the SCAN line and were not disciplined. Appellant argues that he was a good social
14 worker and that demotion was not warranted.

15 16 **V. CONCLUSIONS OF LAW**

17 5.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

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19 5.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the
20 charges upon which the action was initiated by proving by a preponderance of the credible evidence that
21 Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate
22 under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
23 (1983).

1 5.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer
2 and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health
3 Services, PAB No. D86-119 (1987).

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5 5.4 Inefficiency is the utilization of time and resources in an unproductive manner, the ineffective use of
6 time and resources, the wasteful use of time, energy, or materials, or the lack of effective operations as
7 measured by a comparison of production with use of resources, using some objective criteria. Anane v.
8 Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co.
9 Super. Ct. Jan. 10, 1997).

10
11 5.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its
12 functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

13
14 5.6 Willful violation of published employing agency or institution or Personnel Resources Board rules or
15 regulations is established by facts showing the existence and publication of the rules or regulations,
16 Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations.
17 Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

18
19 5.7 In determining whether a sanction imposed is appropriate, consideration must be given to the facts
20 and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be
21 disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter
22 others from similar misconduct, and to maintain the integrity of the program. Holladay v. Dep't of Veterans
23 Affairs, PAB No. D91-084 (1992).

24
25 5.8 Respondent has proven that Appellant neglected his duty, was inefficient when he conducted
26 personal business during work hours and when he made personal long distance phone calls on the state

1 SCAN system. Appellant's proven misconduct also constitutes a violation of Policy 6.04 and the policy
2 regarding SCAN use. Appellant's flagrant misuse of state time and resources rises to the level of gross
3 misconduct. Appellant was in a highly professional and responsible position where he was charged with
4 managing a caseload of DCFS clients. Appellant's failure to perform and carry out the duties of his position
5 while he was out on personal business or making personal phone calls is serious and should not be tolerated.
6 Respondent has met its burden of supporting the charges and proving that a demotion to a position where
7 Appellant will be more closely supervised is appropriate under the facts and circumstances. Therefore, the
8 disciplinary sanction of a demotion should be affirmed.

9
10 **VI. ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Steve Hawley is denied.

12
13 DATED this _____ day of _____, 2000.

14
15 WASHINGTON STATE PERSONNEL APPEALS BOARD

16
17 _____
18 Walter T. Hubbard, Chair

19 _____
20 Gerald L. Morgen, Vice Chair